

IN RE: PETITION FOR ZONING VARIANCE  
W/S Malbay Drive, 171' S of  
the c/l of Westbury Road  
(1320 Malbay Drive)  
9th Election District  
4th Councilmanic District  
Malcolm Hugh Nevin, et ux  
Petitioners

\* BEFORE THE  
\* DEPUTY ZONING COMMISSIONER  
\* OF BALTIMORE COUNTY  
\* Case No. 89-437-A

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a variance to permit a side yard setback of 4 feet 4 inches in lieu of the required 7 feet for a proposed porch addition in accordance with Petitioner's Exhibit 1.

The Petitioners appeared and testified. Appearing as Protestants in the matter were Helen and William Williams, adjoining property owners. Stephanie J. Boblooch, President, Orchard Hills Community Association, Inc., appeared as an interested party.

Testimony indicated that the subject property, known as 1320 Malbay Drive, zoned D.R. 5.5, is improved with a single family dwelling which has been Petitioners' residence for the past 30 years. Petitioners propose converting an existing patio on the side of the property to a Florida room addition. Petitioners argued that to require strict compliance with the zoning regulations will not permit them to have a room of sufficient size to meet their needs. Mr. Nevin contends the proposed size would make a more aesthetically pleasing addition.

Mr. & Mrs. Williams testified they are opposed to the requested variance as they are the adjoining property owners on the affected side. Mrs. Williams testified that presently she feels as if they are looking into each other's homes as the houses are close together and submitted photographs depicting the location of the two houses and connecting side

yards. The Williams contend that the granting of the requested variance will result in detriment to their enjoyment of their property and have an adverse effect on the resale value of their home.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

After due consideration of the testimony and evidence presented, there is insufficient evidence to allow a finding that the Petitioners would experience practical difficulty or unreasonable hardship if the requested variance were denied. The testimony presented by Petitioners was in support of a matter of preference rather than of the necessity for the variance. The Petitioners have failed to show that compliance would unreasonably prevent the use of the property or be unnecessarily burdensome. Therefore, the variance requested must be denied.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be denied.

- 2 -

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 9th day of June, 1989 that the Petition for Zoning Variance to permit a side yard setback of 4 feet 4 inches in lieu of the required 7 feet for a proposed porch addition in accordance with Petitioner's Exhibit 1, be and is hereby DENIED.

Ann M. Nastarowicz  
ANN M. NASTAROWICZ  
Deputy Zoning Commissioner  
for Baltimore County

AMN:bjs

Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
(301) 887-3333

J. Robert Haines  
Zoning Commissioner

June 8, 1989



Mr. & Mrs. Malcolm H. Nevin  
1320 Malbay Drive  
Lutherville, Maryland 21093

RE: PETITION FOR ZONING VARIANCE  
W/S Malbay Drive, 171' S of the c/l of Westbury Road  
(1320 Malbay Drive)  
9th Election District - 4th Councilmanic District  
Malcolm Hugh Nevin, et ux - Petitioners  
Case No. 89-487-A

Dear Mr. & Mrs. Nevin:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Zoning Variance has been denied in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 494-3391.

Very truly yours,

Ann M. Nastarowicz  
ANN M. NASTAROWICZ  
Deputy Zoning Commissioner  
for Baltimore County

AMN:bjs

cc: Mr. & Mrs. William M. Williams  
1322 Malbay Drive, Lutherville, Md. 21093

Ms. Stephanie J. Boblooch  
115 Hedgewood Road, Lutherville, Md. 21093

Ms. Carolann M. Ensor  
1321-A Malbay Drive, Lutherville, Md. 21093

People's Counsel

File

#### PETITION FOR ZONING VARIANCE TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1802.2.A.1. and Sec. III, C.3. (1955 Regal)

To allow a side yard setback of 4 ft. 4 in. in lieu of 7 ft.

As required by the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County, for the following reasons: (Indicate hardship or practical difficulty)

PRACTICAL DIFFICULTY - TO BE DISCUSSED AT HEARING

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:

Legal Owner(s):

Signature

Address

City and State

Attorney for Petitioner:

Address

City and State

Attorney's Telephone No.:

ORDERED By The Zoning Commissioner of Baltimore County, this 29th day of June, 1989, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 108, County Office Building in Towson, Baltimore County, on the 30th day of June, 1989, at 2 o'clock P.M.

J. Robert Haines  
Zoning Commissioner of Baltimore County

(over)

#### PROPERTY DESCRIPTION

Beginning on the west side of Malbay Drive 50 feet wide, at the distance of 171 feet from the centerline of Westbury Road. Being lot 8, block 8, section 2, plat 1 in the Road. Being lot 8, block 8, section 2, plat 1 in the subdivision of Orchard Hills. Book GLB 21 Folio 30. Also known as 1320 Malbay Drive, Lutherville, Maryland 21093.

#### PROTESTANT(S) SIGN-IN SHEET

| NAME                | ADDRESS                                |
|---------------------|--|
| William M. Williams | 1322 Malbay Dr. Lutherville, Md. 21093 |
| Helen Williams      | " " " "                                |

| INTERESTED PARTY      | ADDRESS   |
|-----------------------|---|
| Stephanie J. Boblooch | President, Orchard Hills Community Assn. Inc.<br>c/o 115 Hedgewood Rd. Lutherville, Md. 21093 |

#### PETITIONER(S) EXHIBIT (2)





Mr. J. Robert Haines  
Zoning Commissioner of  
Baltimore County  
County Office Building  
Towson, MD 21204

June 6, 1989  
Re: Request for Zoning Variance 89-487-A  
Case # 89-487-A

ZONING OFFICE

Dear Mr. Haines,

At the zoning hearing I was shown two letters that had been received in protest of the request for a variance. I have just obtained copies of the two letters and wish to provide some additional information to you.

The letter from Ms. Ensor was received in your office on May 17th. On May 6th, her nephew (Wilton Leland Ensor III) who resides in her house, backed out of her driveway and dented my son's new 1989 Pontiac which was parked in front of our house. My son lives in Baltimore City and was visiting. The car was one week old. My son, my wife, a friend and I were all standing in the front yard at the time the car was hit. Ms. Ensor was also standing in her front yard at the time. The nephew did not get out of the truck or offer any excuse, but instead, he drove off. We called the police to report the "accident" and while the police officer was completing his report, the nephew returned, went in the driveway and into the house. The officer had to go the house and get the nephew to come out to the police car. He had to be ordered to provide insurance information and still never apologized. He was charged with negligent driving and with leaving the scene of an accident. His case comes up in District Court on August 17th at 8:45 AM.

Ms. Ensor has lived across the street for barely three years. She built a new house on part of the old Price property. We have lived here for 33 years and when we initially met Ms. Ensor to welcome her to the neighborhood, she advised us that "she did not need neighbors". I would suggest that her letter was motivated more by her concern that the police were called in the above incident than by any concern for the enhancement of the neighborhood. In addition her letter mentions that "The above referenced property was built as an exception to the covenants of Orchard Hills Development. Said covenants required a 15' side yard. 1320 Malbay has only 10' now". Our present side lot setback is 15 feet 4 inches, which meets the 15 foot side yard mentioned in the covenant. There was no exception! Her letter also references a "very dirty greenhouse on rear of said property". Prior to the nephew's problem, she had requested and received plants and flowers from our property and the greenhouse. The greenhouse is a Lord and Burnham curved eave residential unit which is part of a showcase yard we would be proud to show to anyone.

Unfortunately, some of the concerns expressed by our neighbors, the Williams, came from Ms. Ensor who told them that their property would lose value if the variance was permitted. The Williams had originally given their blessing to the proposed addition before I removed and sold the awning and frame that was located at the site of the proposed addition and had filed for a building permit. We never intended to cause a problem in the neighborhood or community.

Sincerely,  
Malcolm H. Nevin  
Malcolm H. Nevin

RECEIVED  
MAY 17 1989  
ZONING OFFICE

Zoning Commissioner for Balt. Co.  
County Office Building  
Towson, Maryland 21204

Re: Case 89-487-A  
Malcolm H. Nevin  
1320 Malbay Dr.  
Baltimore, Md. 21203  
Henry 5/30/89 @ 2 PM  
Towson - Side Setback

Dear Sir:

The above referenced property was built as an exception to the covenants of Orchard Hills Development. Said covenants required a 15' side yard. 1320 Malbay has only 10' now. I allow further encroachment on a neighbor is totally uncalculated and unnecessary. This will decrease the value of all properties affected and detract from all properties facing same.

There is now spitting a very dirty greenhouse on rear of said property and this little pretty unit on the side front can certainly not serve and enhance an overcrowded lot on our neighborhood. At the very least come out and see for yourself.

Sincerely,  
Carolyn M. Ewen  
1321 A Malbay Dr.  
Baltimore, Md. 21203  
Phone 821-5899

CERTIFICATE OF POSTING  
ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District: 2nd  
Posted for: Variance  
Petitioner: Malcolm H. Nevin  
Location of property: 1320 Malbay Drive, Baltimore, Md.  
Location of Sign: 1320 Malbay Drive, Baltimore, Md.  
Remarks:  
Posted by: J. Robert Haines  
Number of Signs: 1  
Date of return: 5/31/89

CERTIFICATE OF PUBLICATION

NOTICE OF HEARING  
The Zoning Commission of Baltimore County, by authority of the County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204, is hereby giving notice that a public hearing will be held on the following date and at the following location:  
Date: May 30, 1989 at 2:00 p.m.  
Location: County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204.  
The purpose of the hearing is to hear testimony from the petitioner and from any other persons who may wish to be heard on the proposed variance.  
The petitioner is: Malcolm H. Nevin, et ux, 1320 Malbay Drive, Baltimore, Maryland 21203.  
The proposed variance is: To allow a side yard setback of 10 feet, 4 inches, in lieu of the required 15 feet, 4 inches, for the rear of the property located at 1320 Malbay Drive, Baltimore, Maryland 21203.  
The variance is requested for a 15' x 16' porch on the rear of the property. The proposed variance is requested for a 15' x 16' porch on the rear of the property. The proposed variance is requested for a 15' x 16' porch on the rear of the property.

TOWSON, MD., May 4, 1989  
THIS IS TO CERTIFY, that the annexed advertisement was published in TOWSON TIMES, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on May 4, 1989.

THE JEFFERSONIAN  
TOWSON TIMES,

S. Zeke Olson  
Publisher

PO 12016  
reg M38941  
re 89-487-A  
price \$ 90.53

Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
494-3353

J. Robert Haines  
Zoning Commissioner

Date: 5/9/89



Dennis F. Rasmussen  
County Executive

Mr. & Mrs. Malcolm Hugh Nevin  
1320 Malbay Drive  
Lutherville, Maryland 21093

Re: Petition for Zoning Variance  
CASE NUMBER: 89-487-A  
W/S Malbay Drive, 171 ft. 5 c/l of Westbury Road  
1320 Malbay Drive  
9th Election District - 4th Councilmanic  
Petitioner(s): Malcolm Hugh Nevin, et ux  
HEARING SCHEDULED: TUESDAY, MAY 30, 1989 at 2:00 p.m.

Dear Petitioners:

Please be advised that \$105.53 is due for advertising and posting of the above-referenced property. All fees must be paid prior to the hearing. Do not remove the sign and post set(s) from the property from the time it is posted by this office until the day of the hearing itself.

THIS FEE MUST BE PAID AND THE ZONING SIGN(S) AND POST(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Please make your check payable to Baltimore County, Maryland and bring it along with the sign(s) and post(s) to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204, 5 minutes before the hearing.

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

DATE: 5/30/89 ACCOUNT: R-01-615-000

AMOUNT: \$ 105.53

RECEIVED FROM: Malcolm Hugh Nevin, et ux

FOR: RA 5/30/89 Hearing 89-487-A

VALIDATION OR SIGNATURE OF CASHIER

Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
494-3353

J. Robert Haines  
Zoning Commissioner

April 18, 1989

NOTICE OF HEARING



Dennis F. Rasmussen  
County Executive

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

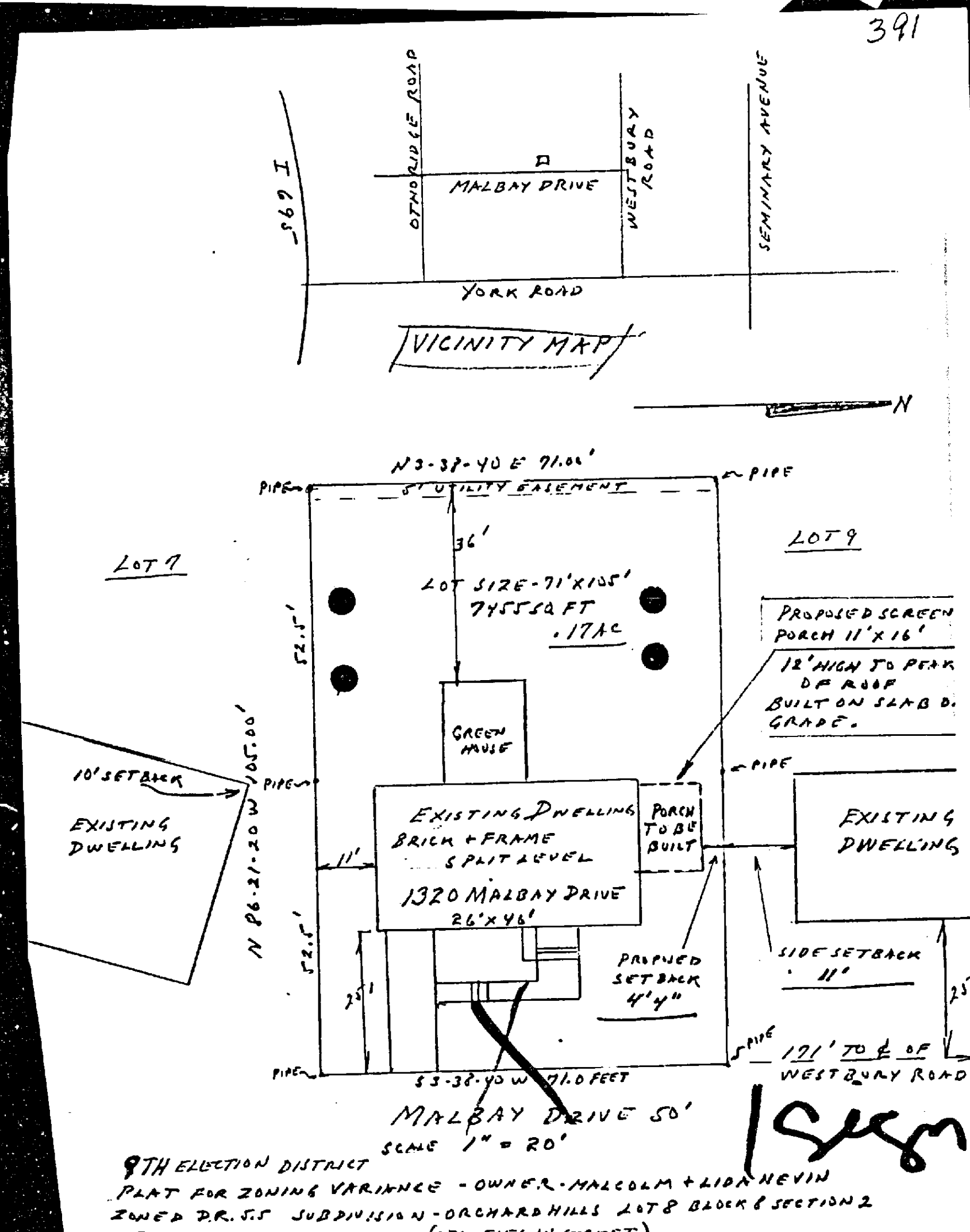
Petition for Zoning Variance  
CASE NUMBER: 89-487-A  
W/S Malbay Drive, 171 ft. 5 c/l of Westbury Road  
1320 Malbay Drive  
9th Election District - 4th Councilmanic  
Petitioner(s): Malcolm Hugh Nevin, et ux  
HEARING SCHEDULED: TUESDAY, MAY 30, 1989 at 2:00 p.m.

Variance to allow a side yard setback of 4 ft., 4 in. in lieu of the required 7 ft.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. Robert Haines  
Zoning Commissioner of  
Baltimore County

cc: Mr. & Mrs. Nevin  
File



89-487-A  
BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

Your petition has been received and accepted for filing this  
29th day of March, 1989

J. Robert Haines  
ZONING COMMISSIONER

Petitioner: Malcolm H. Nevin, et ux  
Petitioner's Attorney

Received by: Thomas P. Dyer  
Chairman, Zoning Plans  
Advisory Committee



BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

May 4, 1989

COUNTY OFFICE BLDG.  
111 W. Chesapeake Ave.  
Towson, Maryland 21204

000

Mr. & Mrs. Malcolm H. Nevin  
1320 Malbay Drive  
Lutherville, MD 21093

RE: Item No. 391, Case No. 89-487-A  
Petitioner: Malcolm H. Nevin, et ux  
Petition for Zoning Variance

Dear Mr. Nevin:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

IT WOULD BE APPRECIATED IF YOU WOULD RETURN YOUR WRITTEN COMMENTS TO MY OFFICE, ATTENTION JULIE WINIARSKI. IF YOU HAVE ANY QUESTIONS REGARDING THIS, PLEASE CONTACT HER AT 887-3391.

Very truly yours,

*James E. Dyer/jw*  
JAMES E. DYER  
Chairman

Zoning Plans Advisory Committee

JED:jw

Enclosures

Baltimore County  
Department of Public Works  
Bureau of Traffic Engineering  
Courts Building, Suite 405  
Towson, Maryland 21204  
(301) 887-3554

April 21, 1989



Dennis F. Rasmussen  
County Executive

Mr. J. Robert Haines  
Zoning Commissioner  
County Office Building,  
Towson, MD 21204

Dear Mr. Haines

The Bureau of Traffic Engineering has no comments for items number 385, 386, 387, 390 and 391.

Very truly yours,

*Michael S. Flanigan*  
Michael S. Flanigan  
Traffic Engineer Assoc. II

MSF/lab

RECEIVED  
APR 28 1989

ZONING OFFICE

Baltimore County  
Fire Department  
Towson, Maryland 21204-2586  
494-4500

Paul H. Reincke  
Chief

J. Robert Haines, Zoning Commissioner  
Office of Planning & Zoning  
Baltimore County Office Building  
Towson, Maryland 21204



Dennis F. Rasmussen  
County Executive

Re: Property Owner: Malcolm Hugh Nevin, et ux

Location: W/S Malbay Drive, 171' S of centerline of Westbury Rd.

Item No.: 391

Zoning Agenda: March 28, 1989

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

- ( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals or \_\_\_\_\_ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- ( ) 2. A second means of vehicle access is required for the site.
- ( ) 3. The vehicle dead end condition shown at \_\_\_\_\_  
EXCEEDS the maximum allowed by the Fire Department.
- ( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
- (X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," 1976 edition prior to occupancy.
- ( ) 6. Site plans are approved, as drawn.
- ( ) 7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: *Chris J. Kelly* 3-23-89  
Planning Group  
Special Inspection Division

NOTED & APPROVED: *Capt. W. J. Brady*  
Fire Prevention Bureau

/jl

BALTIMORE COUNTY, MARYLAND  
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines  
Zoning Commissioner

DATE: April 21, 1989

FROM: Pat Keller, Deputy Director  
Office of Planning and Zoning

SUBJECT: ZONING ADVISORY COMMENTS

Case # 89-487- A  
Item # 391

Re: Malcolm H. Nevin, et u

The Petitioner requests a variance to allow a side yard setback of 4' 4" in lieu of the required 7 feet. In reference to this request, this office offers no comment.

A:53089.txt p 1

cc: Mr. & Mrs. Nevin